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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,103	07/20/2001	Lino Lglesais	38146	5630

29569 7590 10/18/2004

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EXAMINER

MEUCCI, MICHAEL D

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

### Application No.

09/682,103

### Applicant(s)

LGLESAIS ET AL.

### Examiner

Michael D Meucci

### Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Oath/Declaration***

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

a. Scanned pages of declaration are of poor quality, illegible, and cut off on right side. A new Oath/Declaration must be filed to correct the deficiencies set forth above. The substitute oath or declaration must be filed within the THREE MONTH shortened statutory period set for reply. Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136. Failure to timely file the substitute declaration (or oath) will result in **ABANDONMENT** of the application.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 6-10 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The computer program as claimed is considered non-statutory subject matter since it does not fall into any of the following statutory categories: new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof. No art has been applied in the evaluation of these claims.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-10 rejected under 35 U.S.C. 112, first paragraph, because the best mode contemplated by the inventor has not been disclosed. The quality of applicant's disclosure is so poor as to effectively result in concealment of the best mode for carrying out the invention.

Claim 1 contains no methodology and does not clearly set forth the metes and bounds of the patent protection desired.

6. Citation from MPEP § 2114 [R-1]:

**Apparatus and Article Claims - Functional Language**

For a discussion of case law which provides guidance in interpreting the functional portion of means-plus-function limitations see MPEP § 2181 - § 2186.

**APPARATUS CLAIMS MUST BE STRUCTU-RALLY DISTINGUISHABLE FROM THE PRIOR ART**

>While features of an apparatus may be recited either structurally or functionally, claims< directed to >an< apparatus must be distinguished from the prior art in terms of structure rather than function. >In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art

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reference); see also *In re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); < *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959).

"[A]pparatus claims cover what a device is, not what a device does." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original).

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-10 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 discloses a method comprising the step of "having." It is unclear to the examiner what the metes and bounds of the claims are.

9. Because a person of ordinary skill in the art would be forced to resort to undue experimentation to make and use the applicant's disclosed invention, only a general state of the art search has been provided.

Hu (U.S. 6,173,322 B1) discloses network request distribution based on static rules and dynamic performance data.

Ma et al. (U.S. 6,192,406 B1) discloses startup management system and method for networks.

Jong et al. (U.S. 6,192,403 B1) discloses method and apparatus for adaptive monitor and support system.

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Broadhurst et al. (U.S. 6,205,480 B1) discloses system and method for web server user authentication.

Yalowitz et al. (U.S. 6,212,649 B1) discloses system and method for providing highly-reliable coordination of intelligent agents in a distributed computing system.

Chou et al. (U.S. 6,247,056 B1) discloses method and apparatus for handling client request with a distributed web application server.

Factor (U.S. 6,311,219 B1) discloses system and method for locating resources in a distributed network.

Water et al. (U.S. 6,338,088 B1) discloses service creation apparatus for a communications network.

Fairchild et al. (U.S. 6,343,320 B1) discloses automatic stat consolidation for network participating devices.

Togawa (U.S. 6,385,639 B1) discloses device and method of controlling intergroup resource utilization.

Hemphill et al. (U.S. 6,490,617 B1) discloses active self discovery of devices that participate in a network.

Vaid et al. (U.S. 6,502,131 B1) discloses directory enabled policy management tool for intelligent traffic management.

Bakshi et al. (U.S. 6,574,663 B1) discloses active topology discovery in active networks.

Mikurak (U.S. 6,606,744 B1) discloses providing collaborative installation management in a network-based supply chain environment.

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Porras et al. (U.S. 6,704,874 B1) discloses network-based alert management.

Cato et al. (U.S. 6,728,751 B1) discloses distributed back up of data on a network.

Brownell (U.S. 6,754,831 B2) discloses authenticated firewall tunneling framework.

Frantz et al. (U.S. 6,757,725 B1) discloses sharing an Ethernet NIC between two sub-systems.

Moran et al. (U.S. 6,757,543 B2) discloses system and method for wireless data performance monitoring.

Wells (U.S. 6,779,117 B1) discloses authentication program for a computer operating system.

Soles et al. (U.S. 6,782,421 B1) discloses system and method for evaluating the performance of a computer application.

Dugan et al. (U.S. 6,788,649 B1) discloses method and apparatus for supporting ATM service in an intelligent network.

Elnozahy et al. (U.S. 6,792,459 B2) discloses verification of service level agreement contracts in a client server environment.

Chrisment et al. (ALF) discloses distributed applications, databases, protocols, and infrastructure.

Riezenman (Beneath the Internet) discloses protocol infrastructure and multiplexing.

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**Conclusion**

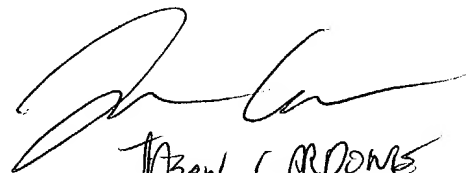
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Meucci at (703) 305-1382, or at (571) 272-3899 after October 26<sup>th</sup>, 2004. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey, can be reached at (703) 305-9705, or at (571) 272-3896 after October 26<sup>th</sup>, 2004. The fax phone number for this Group is (703) 308-5358.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [michael.meucci@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Group receptionist whose telephone number is (703) 305-3900.

  
John C. McDowell  
Primary ex.  
AU:2145